



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,643	04/09/2004	Robert J. Medoff	U 015145-3	9009
140	7590	11/20/2007		
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER SWIGER III, JAMES L	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 11/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,643

Applicant(s)

MEDOFF, ROBERT J.

Examiner

James L. Swiger

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 and 54-58 is/are pending in the application.
- 4a) Of the above claim(s) 1-37 and 54-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-45 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/9/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other; _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-37, and 54-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/20/2007.

Applicant's election with traverse of Invention III in the reply filed on 8/20/2007 is acknowledged. The traversal is on the ground(s) that newly added claim 58 is a linking claim that would. This is not found persuasive because claim 58 is a dependent claim and does not necessarily have any bound to the other claims. It does not provide necessarily a "generic" claim as originally presented.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38-45 and 58 rejected under 35 U.S.C. 102(b) as being anticipated by Medoff (US Patent 5,709,682). Medoff discloses a device to fix bone fragments comprising a buttress pin (41), a fixation washer having a body (46) for securing a stable bone fragment, a wire element having a U-shaped bend (12), with opposite legs

extending from the U-shaped end (13 and 11), with the legs being considered to bent away (49) and can engage with the bone fixedly with the tabbed portions (15). The legs are also of equal length (see profile in Fig. 21). The buttress pin also has legs that are bent outwardly with respect to one another (13 and 11) in Fig. 10. Figure 24 also shows legs in two separate regions (inner and outer, for example) having different spacings (inner and outer would have different spacings). They are parallel in those first and second regions. The reference also shows a stepped portion (#77) separating the regions and is also considered to have a bend. It is further noted that with respect to "said legs" in claims 41 and 42 it is not definite as to which legs it refers to. As such the reference would meet these claim limitations depending on how it is viewed.

Allowable Subject Matter

After further consideration, the indicated allowability of claim 45 is withdrawn in view of Medoff. Rejections based on the newly cited reference(s) are above.

Response to Arguments

Applicant's arguments filed 11/6/2006 have been fully considered but they are not persuasive.

Though applicant's arguments are now piecemeal in view of the election restriction, applicable sections are noted. With regards to the wire extending at an angle, Fig. 25, for example, shows the wires extending at an angle away from the upper wire portion (77/79). Also, as stated above in the rejection, the various wire lengths as claimed are anticipated by the reference. Items 71, 77, or 73 in Figs. 24, for example, may be grouped appropriately, into different regions at least, to meet the specific claim

Art Unit: 3733

limitations. Figure 29, shows how these wires set at different lengths grab bone for a more secure fit.


Conclusion

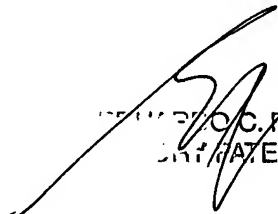
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 11/13/07


EDUARDO ROBERT
PATENT EXAMINER